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80-2197

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

STATE OF ALABAMA, Ex Rel. Charles A. Graddick, as Attorney General of the State of Alabama,

Petitioner

v.

TENNESSEE VALLEY AUTHORITY, et al.,

Respondents

APPENDIX

(Volume I)

TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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THE STATE OF ALABAMA

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APPENDIX A

STATE OF ALABAMA ex rel. William J. BAXLEY, as Attorney General of the State of Alabama, Plaintiff,

v.

TENNESSEE VALLEY AUTHORITY, Aubrey J. Wagner as Chairman of the Board of Directors of the TVA, et al., Defendants.

Civ. A. No. 77-M-0377.

United States District Court, N. D. Alabama, Northwestern Division.

Jan. 25, 1979.

MEMORANDUM OPINION

McFADDEN, Chief Judge.

The State of Alabama, on the relation of its Attorney General, in this action against the Tennessee Valley Authority, and its board of directors (TVA), seeks a declaration that Section 8(a) of the Tennessee Valley Authority Act, 16 U.S.C. § 831g(a) requires TVA to locate its administrative and executive offices at Muscle Shoals, Alabama, and an injunction restraining TVA

from maintaining such offices at a place other than Muscle Shoals. Jurisdiction exists under 28 U.S.C. § 1331.

Pending before the court are cross-motions for summary judgment. The issues raised by these motions are whether Alabama has standing to bring this action, whether the suit is barred by the doctrine of res judicata, and finally, whether section 8(a) of the Act requires TVA to locate its main offices at Muscle Shoals, Alabama.

I. STANDING

Alabama alleges that it has standing to bring this action in both its proprietary capacity, and in its representative capacity as parens patriae for its citizens.

A. The State as Parens Patriae.

TVA first contends that Massachusetts v. Mellon, 262 U.S. 447, 43 S. Ct. 597, 67

L. Ed. 1078 (1923), denies Alabama standing, in its parens patriae capacity, to sue a federal agency:

> While the state, under some circumstances, may sue for the protection of its citizens, . . . it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them as parens patriae.

Id. at 485-86, 43 S. Ct. at 600. Accord South Carolina v. Katzenbach, 383 U.S. 301, 324, 86 S. Ct. 803, 15 L. Ed. 2d 769 (1966); Com. of Pa. by Shapp v. Kleppe, 174 U.S. App. D.C. 441, 533 F. 2d 668 (1976), cert. denied 429 U.S. 977, 97 S. Ct. 485, 50 L. Ed. 2d 584 (1976).

In both Mellon and Katzenbach, the plaintiff states challenged the constitutionality of federal statutes. Standing

in those circumstances would be "clearly and obviously a fundamental threat to the federal sovereign power." Com. of Pa. by Shapp v. Kleppe, supra, 174 U.S. App. D.C. at 455, 533 F. 2d at 682 (Lumbard, J., dissenting). Alabama, however, "seeks only to vindicate the will of the people as it has been expressed by their duly elected representatives in the national legislature." Id. Therefore, the federalism considerations present in those actions are absent here. Compare Georgia v. Pennsylvania R.R., 324 U.S. 439, 445, 65 S. Ct. 716, 89 L. Ed. 1051 (1945).

In Washington Utilities & Transp. Com'r. v. F. C. C., 513 F. 2d 1142 (9th Cir. 1975), cert. denied 423 U.S. 836, 96 S. Ct. 62, 46 L. Ed. 2d 54 (1975), the court found this distinction to be dispositive and held that a state, through one of its agencies, had parens patriae standing to challenge federal agency action:

> WUTC does not attack the constitutionality of the Communications Act on any ground; rather, it relies upon the federal statute and seeks to vindicate the congressional will by presenting what it asserts to be a violation of that statute by the administrative agency charged with its enforcement.

Id. at 1153.

Other cases support parens patriae standing in this case. In State of Florida v. Weinberger, 492 F. 2d 488 (5th Cir. 1974), the court held that Florida, on behalf of its citizens, had standing to challenge the Secretary of HEW's power to enact certain regulations under the Medicaid Act, 42 U.S.C. §1396A. In State of New York v. United States, 65 F. Supp. 856 (S.D.N.Y. 1946) (three-judge court), affirmed 331 U.S. 284, 67 S. Ct. 1207, 91 L. Ed. 1492 (1947), the court

found that the state had standing as parens patriae to challenge an alleged misapplication of a federal statute by the Interstate Commerce Commission.

In the court's view the rationale of Massachusetts v. Mellon, supra, is not applicable to the facts in the present case cand there is no constitutional barrier to Alabama acting as parens patriae for its citizens.

There is, however, an inherent limitation on the legitimacy of any action brought by a state as parens patriae. In Pennsylvania v. New Jersey, 426 U.S. 660, 96 S. Ct. 2333, 49 L. Ed. 2d 124 (1976), the court noted that:

> It has, however, become settled doctrine that a State has standing to sue [as parens patriae] only when its sovereign or quasi-sovereign interests are implicated and it is not merely litigating

as a volunteer the personal claims of its citizens.

Id. at 665, 96 S. Ct. at 2336.

Quasi-sovereign interests are implicated where the injury for which redress is sought affects the general welfare of the state, or its citizens at large. Kansas v. Colorado, 206 U.S. 46, 99, 27 S. Ct. 655, 51 L. Ed. 956 (1907); Louisiana v. Texas, 176 U.S. 1, 19, 20 S. Ct. 251, 44 L. Ed. 347 (1900).

Alabama alleges that the location of TVA at Muscle Shoals would benefit the general welfare of its citizens and promote the economic well-being of the state by the creation of thousands of jobs in the Muscle Shoals area, and the injection of millions of dollars into the state economy. The court is of the opinion that these allegations are sufficient to support a finding of injury to the quasi-sovereign interests of Alabama.

B. The Proprietary Interests of the State.

Alabama's proprietary interests are alleged to have been harmed by the loss of tax revenues, the denial of a statutory right conferred by section 8(a), and the loss of honor and prestige resulting from the failure of TVA to locate its headquarters at Muscle Shoals.

A state has at least the same right of access to the court as any other institution to seek redress for injuries sustained in its proprietary capacity. Com. of Pa., by Shapp v. Kleppe, supra. See also Hawaii v. Standard Oil Company of California, 405 U.S. 251, 92 S. Ct. 885, 31 L. Ed. 2d 84 (1972).

The court agrees with the statement in Com. of Pa., by Shapp v. Kleppe, supra, 174 U.S. App. D.C. at 445, 533 F. 2d at 672, that an "allegation that tax revenues were reduced embodies a comprehensible

harm to the economic interests of the state government," and therefore is of the opinion that Alabama, in its proprietary capacity, has alleged a judicially cognizable claim for relief. Compare, Massachusetts v. Mellon, supra, at 485. Since only injunctive and declaratory relief is sought, the court need not decide whether the alleged denial of a statutory right or loss of honor and prestige are redressable injuries.

C. Constitutional and Prudential Limitations on Standing.

Having determined that the identity of the parties is no bar to the adjudication of the claims set forth in the complaint, consideration must now be given to those standing questions applicable to any suit brought in a federal court.

Under article III of the Constitution of the United States, the federal judicial power extends only to "cases" or "controversies". Muskrat v. United States, 219

U.S. 346, 356, 31 S. Ct. 250, 55 L. Ed. 246 (1911).

> In terms of Article III limitations on federal court jurisdiction, the question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.

Flast v. Cohen, 392 U.S. 83, 101, 88 S. Ct. 1942, 1953, 20 L. Ed. 2d 947 (1968).

A recent exposition of the Supreme Court concerning the Article III requisites of standing is found in Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 98 S. Ct. 2620, 57 L. Ed. 2d 595 (1978):

> The essence of the standing inquiry is whether the parties seeking to invoke the court's jurisdiction have "alleged such a personal stake in the outcome of

the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Baker v. Carr, 369 U.S. 186, 204, 82 S. Ct. 691, 703, 7 L. Ed. 2d 663 (1962). As refined by subsequent reformulation, this requirement of a "personal stake" has come to be understood to require not only a "distinct and palpable injury," to the plaintiff, Warth v. Seldin, 422 U.S. 490, 501, 95 S. Ct. 2197, 45 L. Ed. 2d 343, but also a "fairly traceable" casual connection between the claimed injury and the challenged conduct. Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 261, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977). See also Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41-42, 96 S. Ct. 1917,

48 L. Ed. 2d 450 (1976); Linda R. S. v. Richard D., 410 U.S. 614, 617, 93 S. Ct. 1146, 35 L. Ed. 2d 536 (1973).

Id. at 2630.

Prior to the submission of the pending motions, the court granted TVA's request for a protective order against answering interrogatories seeking to discover the number of persons employed by TVA and the dollar amount of the payroll allocable to them. TVA, however, has not disputed the factual allegations of the complaint, and properly recognizes that it is the nature of the claimed injury, and not the amount thereof which is relevant to the standing inquiry. United States v. SCRAP, 412 U.S. 669, 689, n. 14, 93 S. Ct. 2405, 37 L. Ed. 2d 254 (1973).

It is common knowledge that the presence of the headquarters of an organization the size of TVA would generate tax revenues directly and indirectly to the state

and have a significant economic impact on the state. Clearly, the absence of the jobs the headquarters would provide and money thereby generated from Alabama's economic system is a "direct and palpable injury" to its quasi-sovereign interest in the general welfare of its citizens.

The court finds, therefore, that Alabama, as parens patriae for its citizens, and in its own right as an entity possessing proprietary interest, has satisfied the "direct injury" test for standing under article III.

The other article III requirement for standing is a showing that there is "a 'substantial likelihood' that the relief requested will redress the injury claimed." Duke Power Co. v. Carolina Environmental Study Group, Inc., supra, 98 S. Ct. at 2631 n. 20. See also, Regents of the University of California v. Bakke, 438

U.S. 265, 98 S. Ct. 2733, 2743 n. 14, 57 L. Ed. 2d 750 (1978). There is no doubt that a judicial decree requiring TVA to locate its headquarters at Muscle Shoals will result in the influx of jobs and dollars into the state economy, and will result in increased tax revenues for the state. The court is of the opinion that the "redressability" requirement has been met.

TVA has steadfastly asserted that Alabama must also demonstrate that its interests which have been injured are within the "zone of interests" meant to be protected by the TVA Act, citing Data Processing Service v. Camp, 397 U.S. 150, 90 S. Ct. 827, 25 L. Ed. 2d 184 (1970), and Flast v. Cohen, 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968).

Some commentators have questioned the continued validity of the "zone of interests" test. See, e.g., K. Davis,

Administrative Law of the Seventies, §22.02-11, at 184-187 (1978 Supp.); Sedler, Standing Justiciability, and All That: A Behavioral Analysis, 25 Vand. L. Rev. 479, 486 (1972). An analysis of the opinion in Duke Power Co. v. Carolina Environmental Study Group, Inc., supra, strongly suggests that that test has been abandoned. In Duke, the defendants argued that in order to have standing, the plaintiffs should have been required to demonstrate a connection between the rights being asserted and the injuries suffered. The court declined to apply a Flast-type nexus test and held:

> We . . . cannot accept the contention that, outside the context of taxpayers' suits, a litigant must demonstrate anything more than injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury to satisfy the "case

or controversy" requirement of Art. III.

98 S. Ct. at 2634.

In the court's opinion, Alabama has satisfied the article III requirements for standing.

TVA's final objection to Alabama's standing to bring this action is that the injuries it complains of are no more than generalized grievances which are equally shared by all citizens of the United States, and therefore fall within the prudential limitations on the exercise of federal jurisdiction. See Warth v. Seldin, 422 U.S. 490, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975); Schlesinger v. Reservists to Stop the War, 418 U.S. 208, 94 S. Ct. 2925, 41 L. Ed. 2d 706 (1974); United States v. Richardson, 418 U.S. 166, 94 S. Ct. 2940, 41 L. Ed. 2d 678 (1974).

The Supreme Court, however, has recently de-emphasized the prudential limitations

on the classes of persons who may properly challenge governmental action:

> Where a party champions his own rights, and where the injury alleged is a concrete and particularized one which will be prevented or redressed by the relief requested, the basic practical and prudential concerns underlying the standing doctrine are generally satisfied when the constitutional requisites are met. (Citations omitted)

Duke Power Co. v. Carolina Environmental Study Group, Inc., supra, 98 S. Ct. at 2634.

Regardless of the weight to be given to general prudential concerns, it appears to the court that TVA has perhaps misconstrued the nature of the grievance asserted by Alabama. The fact that all national citizens have an idealogical interest in a federal agency's compliance with the law, First National Bank v.

Missouri, 263 U.S. 640, 666-67, 44 S. Ct. 212, 68 L. Ed. 486 (1924) (Van Devanter, J. dissenting), does not preclude a readily identifiable portion of that citizenry from asserting a distinct and particularized harm. Alabama has shown interests which are sufficiently apart from a generalized interest in good government to overcome any duty on the part of this court to stay its hand on prudential grounds.

II. RES JUDICATA

TVA has interposed the judgment of the court in Frahn v. Tennessee Valley Authority, 41 F. Supp. 83 (N.D. Ala. 1941), as a bar to the present suit. In that case, an action was brought against TVA by citizens and taxpayers of the Muscle Shoals area, on behalf of themselves and others similarly situated, seeking a declaration that TVA was violating section

8(a) of the TVA Act by not locating its general headquarters at Muscle Shoals.

Alabama maintains that Frahn does not preclude this action for two reasons: (1) the section 8(a) issue was not decided there, and (2) the State of Alabama was not a party to that case.

The court in Frahn held that it lacked jurisdiction to interpret section 8(a) because the complaint failed "to present a justiciable controversy." 41 F. Supp. at 86. In reaching this conclusion the court found that the plaintiffs lacked standing to bring the action, and that the interpretation placed on section 8(a) by TVA was not so unreasonable as to require judicial interference. Alabama argues that the holding of non-justiciability encompasses only the lack of standing, and the finding that the interpretation of section 8(a) was committed to administrative discretion is dictum.

The court is of the opinion that this is true and that Judge Murphree's finding of lack of a justiciable controversy was based on the lack of standing. If plaintiffs lacked the standing to bring the action, the court's comments with respect to the statutory interpretation question were dictum. However, even if, as TVA contends, the decision was based on two grounds—standing and the lack of power to contest the discretion of the executive officers of the government in respect to the interpretation of the statutes—this action is not necessarily precluded by Frahn. Alabama could not be bound by that judgment under res judicata principles unless it was a party to the proceeding. Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 89 S. Ct. 1562, 23 L. Ed. 2d 129 (1969); State of Texas v. Chuoke, 154 F. 2d 1 (5th Cir. 1946), cert. denied 329 U.S. 714, 67 S. Ct. 45, 91 L. Ed. 620 (1946).

TVA does not pretend that Alabama was a named plaintiff in Frahn, but maintains that it should be bound by the judgment there because Frahn was a class action on behalf of all Alabama citizens. The court cannot accept this contention. Besides the absence of any indication that a plaintiff class was ever certified by the Frahn court, in the present action Alabama has sued on its own right, asserting injury to its proprietary and quasi-sovereign interests. The court is of the opinion that these interests are not so identical to those of the putative class of plaintiffs in Frahn as to make the judgment in that case a bar to the present proceedings even if the question was there decided. Compare Dufee v. Duke, 375 U.S. 106, 84 S. Ct. 242, 11 L. Ed. 2d 186 (1963).

III. THE "PRINCIPAL OFFICE" PROVISION OF SECTION 8(a)

Section 8(a) of the Tennessee Valley Authority Act of 1933, 16 U.S.C. § 831g(a), provides:

> The Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits.

Alabama contends that this provision requires TVA to locate its administrative and operational headquarters at Muscle Shoals. TVA submits that section 8(a) only requires that it maintain an office to accept service of process at Muscle Shoals. This is essentially what TVA does, with its administrative and operational

headquarters being maintained elsewhere, principally in Knoxville, Tennessee.

As a threshold matter, the court must deal with TVA's assertion that it has discretion to interpret the meaning of the principal office provision. The asserted TVA grant of discretion to choose the location of its headquarters is based on Section 3 of the Act, which authorizes the Board to:

> appoint such managers, assistant managers, officers, employees, attorneys, and agents as are necessary for the transaction of business . . . and provide a system of organization to fix responsibility and promote efficiency.

16 U.S.C. § 831b.

The court is not persuaded by this argument. In Morton v. Ruiz, 415 U.S. 199, 94 S. Ct. 1055, 39 L. Ed. 2d 270 (1974), the court noted that the Secretary of the Interior had by statute, been granted

broad managerial authority over Indian affairs. Id. at 231 n. 26, 94 S. Ct. 1055. However, the court rejected the administrative interpretation of the statute in question, holding that in order for an agency interpretation to be granted deference it must be consistent with the congressional purpose. Id. at 237, 94 S. Ct. 1055.

The principle of judicial deference to the interpretation given a statute by those charged with its enforcement has long been recognized. See, e.g., Red Lion Broadcasting Co. v. F. C. C., 395 U.S. 367, 89 S. Ct. 1794, 23 L. Ed. 2d 371 (1969); Zemel v. Rush, 381 U.S. 1, 85 S. Ct. 1271, 14 L. Ed. 2d 179 (1965); Houghton v. Payne, 194 U.S. 88, 24 S. Ct. 590, 48 L. Ed. 888 (1904). However, a court will not defer to the administrative construction where it is shown that such construction is not in accordance with

the Congressional intent behind the statute. Morton v. Ruiz, supra; Espinoza v. Farah Manufacturing Co., Inc., 414 U.S. 86, 94 S. Ct. 334, 38 L. Ed. 2d 287 (1973); Houghton v. Payne, supra. And where the dispute concerns the meaning of a statutory term as opposed to a policy decision requiring exercise of an agency's expertise, the courts will not abdicate their primary function of interpreting the law. Barlow v. Collins, 397 U.S. 159, 90 S. Ct. 832, 25 L. Ed. 2d 192 (1970); Texas Gas Transmission Corp. v. Shell Oil Co., 363 U.S. 263, 80 S. Ct. 1122, 4 L. Ed. 2d 1208 (1960).

The phrase "principal office" is a legal term of art, and its correct interpretation is a matter for judicial determination. Congress is presumed to know the judicially established meaning of the words it uses in statutory provisions. United States v. Merriam, 263

U.S. 179, 44 S. Ct. 69, 68 L. Ed. 240 (1923).

The primary rule of statutory construction is to ascertain and effectuate the legislative intent. 2A Sands, Sutherland Statutory Construction, § 45.05, at 16 (4th ed. 1973). And where a statute is unambiguous, this can be accomplished by examination of the language adopted by the legislature. Caminetti v. United States, 242 U.S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1917).

Alabama asserts that no ambiguity exists in the language of section 8(a), and that the term "principal office" clearly means the main headquarters of a corporation. See, e.g., Peters v. Detroit & Cleveland Nav. Co., 24 F. 2d 454 (W.D. N.Y. 1927); Caceres v. United States Shipping Bd. Emergency Fleet Co., 299 F. 968 (E.D.N.Y. 1924); Mason & Hanger Co. v. Sharon, 231 F. 861 (2d Cir. 1916),

cert. denied 241 U.S. 670, 36 S. Ct. 554, 60 L. Ed. 1230 (1916); Oleck, Modern Corporation Law, § 461, at 705 (1958). TVA, however, argues that the term "principal office," when used in the corporate context, refers to an address for service of process. There is some authority for this position. See, e.g., 40 Op. Atty. Gen. 115 (1941); 18 C.J.S. Corporations § 177 (1939); 8 W. Fletcher, Cyclopedia of the Law of Private Corporations ¶4046, at 483-84 (1966); Oleck, Modern Corporation Law, supra, § 3, at 13.

The court, nevertheless, is of the view that the language of the statute is plain and unambiguous and that it clearly means the main headquarters of the corporation, particularly when read in conjunction with section 2(e) of the TVA Act, 16 U.S.C. § 831a(e), which provides:

> Each of the members of the board shall be a citizen of the United States, and

shall receive a salary at the rate of $10,000 a year, to be paid by the Corporation as current expenses. Each member of the board, in addition to his salary, shall be permitted to occupy as his residence one of the dwelling houses owned by the Government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States. Members of the board shall be reimbursed by the Corporation for actual expenses (including traveling and subsistence expenses) incurred by them in the performance of the duties vested in the board by this Act [16 USCS § 831 et seq.]. No member of said board shall, during his continuance in office, be engaged in any other business, but each member shall devote himself to the work of the Corporation.

82 C.J.S. Statutes, § 345, at 699-700 (1953), states:

> In construing a statute, the intention or purpose of the legislature, or the meaning of a statute is to be determined, not from any single part, portion or section . . . or from particular or specific expressions or terms . . . but from a general consideration or view of the act as a whole or in its entirety. (Footnotes omitted)

And wherever reasonable, the court will adopt that construction which gives effect to all provisions of the statute. Meltzer v. Board of Public Instruction of Orange County, Fla., 548 F. 2d 559 (5th Cir. 1977); 2A Sands, Sutherland Statutory Construction, supra, § 46.06.

It is apparent to the court that the free residence provision of section 2(e) would be meaningless if section 8(a) were construed to allow TVA to locate its main headquarters at a place distant from Muscle Shoals.

Assuming, however, that the language is ambiguous, the legislative history preceding the enactment of the TVA Act of 1933 also points to the conclusion that Congress intended the headquarters of TVA to be located at Muscle Shoals.

The pre-enactment remarks of Senator Norris, the co-author of the TVA Act, clearly indicate that the free residence was intended to be a salary supplement for TVA directors:

> I realize that there is very much disagreement as to whether we could get a man for $9,000 or $10,000 who could fill this place. I am of the opinion that we could. I do not believe there would be any difficulty. If a member of the board desires to live in Muscle Shoals—and I think it is a beautiful place to live—he would have his house rent free, in addition to his salary.

77 Cong. Rec. 2687 (1933).

Although never enacted into law because of Presidential veto, the Muscle Shoals Act of 1928, H.R. 7744, 70th Cong., 1st Sess. (1927), and the Muscle Shoals Act of 1931, S.J. Res. No. 49, 71st Cong., 3d Sess. (1931), both sought to establish the Muscle Shoals Corporation of the United States to oversee the federal government's investment in nitrate and electrical plants located at Muscle Shoals. Section 7(a) of both acts contained language identical to that which was eventually enacted as section 8(a) of the TVA Act of 1933.

Lister Hill was a member of the House Committee on Military Affairs which drafted the 1928 Act. H.R. Rep. No. 1095, 70th Cong., 1st Sess. (1928). He later testified concerning the purpose of the principal office provision:

> The idea and the purpose of the committee in putting that language in

the bill was that the actual headquarters, that those whose business it was to carry on the permanent work, to set the policies, to be the chiefs and the heads, should have their office at Muscle Shoals, Ala.

And in that connection, let me say that back in 1928 the Committee on Military Affairs of the House had a full picture of the situation, in many ways, just about as full as we have today, for this reason; that the engineers, the Army Engineers, at that time had completed the finest and most detailed survey of the Tennessee River that has ever been made of any river in the whole world, and we had that survey of the engineers before us at the time we put this langauge in the bill.

We knew what we were doing; we knew what we wanted to do. We had the facts

that Senator Bankhead has given us this morning about the geographical importance; the fact that after all is said and done, Muscle Shoals is, so to speak, the center of gravity of any activity in that whole great valley.

All of the facts showed that Muscle Shoals was a logical place, that it was a feasible place, and that economy and efficiency dictated that the headquarters be placed there.

I was a member of the Committee on Military Affairs when that language was written into the bill. . . . Hearings Before the Joint Committee on the Investigation of the Tennessee Valley Authority, 75th Cong., at 5224 (1938).

Although the Muscle Shoals Act of 1928 was never enacted into law, given the identity of the language of its principal office provision to that of section

8(a) of the TVA Act, it is fair to infer that the comments of Representative Hill are equally applicable to both provisions. Compare FEA v. Algonquin Sng., Inc., 426 U.S. 548, 652-64, 96 S. Ct. 2295, 49 L. Ed. 2d 49 (1976). And since Senator Norris and Representative Hill were co-sponsors of the TVA Act, their statements are entitled to great weight, even though Alabama, represented by Representative Hill, stood to benefit from their reading of the statute. Id. at 564 n. 17, 96 S. Ct. 2295.

TVA places great reliance on the conclusion reached in the Report of the Joint Committee on the Investigation of the Tennessee Valley Authority, 76th Cong., 1st Sess. 9 (1939):

> The committee finds that the Authority has legally complied with that part of subsection (a) of section 8 of the act, as amended, which requires that

> the principal office of the Authority be maintained in the immediate vicinity of Muscle Shoals, Ala. However, on account of the substantial difference of opinion on the question, the committee recommends that, in view of the approaching completion of the dams, Congress give immediate consideration to clarifying the issue.

Three members of the nine-man committee disagreed with the majority report on this issue and concluded that TVA's maintenance of its headquarters in Knoxville was "a palpable violation of this mandatory provision of the TVA Act." Id. at 331.

The result reached by this committee, along with the fact that Congress has never amended section 8(a), argues TVA, constitutes express approval of its interpretation of the principal office provisions. The Supreme Court has noted,

however, that "[t]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." United States v. Philadelphia Nat'l Bank, 374 U.S. 321, 348-49, 83 S. Ct. 1715, 1733, 10 L. Ed. 2d 915 (1963), quoting United States v. Price, 361 U.S. 304, 313, 80 S. Ct. 326, 4 L. Ed. 334 (1960). See also, Teamsters v. United States, 431 U.S. 324, 97 S. Ct. 1843, 52 L. Ed. 2d 396 (1977).

TVA further supports its argument that the administrative interpretation is in accordance with the Congressional intent by pointing out that Congress has continued to appropriate funds to maintain TVA offices not located in Muscle Shoals, and in fact has specifically refused to appropriate funds for the purpose of relocating TVA offices. Act of July 27, 1953, Ch. 241, 67 Stat. 190.

The Supreme Court, however, has recently

cautioned against reliance on subsequent appropriation acts in determining the intent of the legislature which enacted the underlying statute. Tennessee Valley Authority v. Hill, 437 U.S. 153, 98 S. Ct. 2279, 2299-2300, 57 L. Ed. 2d 117 (1978). Moreover, the probative value of appropriation measures here diminishes in view of the fact that Congress has refused to pass proposed permanent amendments to section 8(a) which would have eliminated Muscle Shoals as the situs of the principal office. See S. 1207, 79th Cong., 1st Sess. (1945), and H.R. 4146, 83d Cong., 1st Sess. (1953).

As was noted earlier in this opinion, the long-standing administrative interpretation of section 8(a) is to be accorded great weight in seeking to determine the proper construction of the Act. But is equally clear that it is not the controlling consideration:

> Contemporaneous and practical interpretation serve as another aid of statutory construction, and therefore must be weighed against the other factors pertinent to the determination of legislative intent.

2A Sands, Sutherland Statutory Construction, supra, § 49.04, at 235.

The court is of the view that the plain reading of the statute requires a finding that Congress fully intended the primary administrative and operational headquarters of TVA to be located in the Muscle Shoals area. The court is further of the view that even if the language were to be considered ambiguous, the employment of other means of statutory interpretation dictates the same result.

Accordingly, TVA's motion for summary judgment is due to be denied and that of the plaintiff granted.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

STATE OF ALABAMA, EX REL. WILLIAM J. BAXLEY	)	
Plaintiff	)	
- v -	)	C.A. 77-M-0377
TENNESSEE VALLEY AUTHORITY et al.	)	
Defendants	)	

ORDER

This cause came to the court on the following motions:

(1) The motion of defendants to dismiss the original complaint or, in the alternative, for summary judgment;

(2) The motion of defendants to dismiss the amended complaint or, in the alternative, for summary judgment; and

(3) The motion of plaintiff for summary judgment.

Defendants' second motion renders moot their first motion. Accordingly, it is hereby ORDERED that defendants' motion to dismiss the original complaint or, in the alternative, for summary judgment is overruled.

In accordance with the memorandum opinion entered contemporaneously:

It is hereby

ORDERED, ADJUDGED and DECREED that the motion of defendants to dismiss the amended complaint or, in the alternative, for summary judgment is overruled;

It is further ORDERED that the motion of plaintiff for summary judgment is granted;

It is further ORDERED, ADJUDGED and DECLARED that defendants are required by law to locate and maintain the headquarters of the Tennessee Valley Authority in the immediate vicinity of Muscle Shoals, Alabama, and that defendants have

failed to do so;

It is further ORDERED that defendants are enjoined from locating or maintaining the headquarters of the Tennessee Valley Authority in any place other than in the immediate vicinity of Muscle Shoals, Alabama.

Costs are hereby taxed to defendants.

Done this 25th day of January, 1979.

/s/ Frank H. McFadden
Chief Judge

APPENDIX C

STATE OF ALABAMA ex rel. Charles A. GRADDICK, as Attorney General of the State of Alabama, Plaintiff-Appellee,

v.

TENNESSEE VALLEY AUTHORITY et al., Defendants-Appellants.

No. 79-1283.

United States Court of Appeals, Fifth Circuit.

Feb. 13, 1981.

Appeal from the United States District Court for the Northern District of Alabama.

Before GEE, FAY and RANDALL, Circuit Judges.

GEE, Circuit Judge:

The Tennessee Valley Authority ("TVA" or "Authority") appeals from an order of the United States District Court for the Northern District of Alabama requiring that its "headquarters" in Knoxville, Tennessee, be packed up and moved to Muscle Shoals, Alabama. The district judge found

this relocation necessary to bring TVA into compliance with section 8(a) of the Tennessee Valley Authority Act of 1933, 16 U.S.C. § 831g(a), which reads in pertinent part: "The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama."[1]

Since its creation by act of Congress in 1933, the TVA has maintained offices in a number of locations, including Knoxville, Chattanooga, Muscle Shoals, and Washington, D.C., in order to facilitate performance of its statutory purposes. It is undisputed that the central administration of the corporation has been located from its earliest days in Knoxville. Members of

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[1]The full text of the section runs: "The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The corporation shall be held to be an inhabitant and resident of the Northern Judicial District of Alabama within the meaning of the laws of the United States relating to the venue of civil suits."

the board of directors maintain their offices in Knoxville; most of their meetings are conducted there; the central offices and directors of a number of the corporation's major divisions are located there. A smaller office is maintained in Muscle Shoals; the administrative staffs of several divisions are located there. The TVA makes no pretense that these Alabama activities comprise those that would be carried on at the administrative headquarters of a corporation.

Dissatisfied with this arrangement, the State of Alabama filed suit in 1977[2] to force the TVA to relocate its central administration in Muscle Shoals. In lieu

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[2]The TVA did not assert the equitable defense of laches to Alabama's suit for injunctive relief, and thus that affirmative defense is unavailable as a possible ground of decision here. Beyond noting the passage of 44 years between the establishment of the headquarters in Knoxville and the filing of this lawsuit, this court will not further consider that delay.

of an answer to this complaint, the TVA filed a motion for summary judgment.[3] Alabama filed a cross motion for summary judgment, which was granted by the court. In a January 25, 1979, order the judge enjoined the TVA "from locating or maintaining the headquarters of the Tennessee Valley Authority in any place other than in the immediate vicinity of Muscle Shoals, Alabama." It is from this order of the district court that TVA now appeals.

Two of the grounds for reversal urged by TVA need delay us only slightly, for we

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[3]The TVA proposed several grounds for summary judgment in its motion, arguments raised again on appeal as grounds for reversal of the adverse trial court judgment: (1) that Alabama lacked standing to assert TVA's alleged non-compliance with the statutory provision on location of its "principal office"; (2) that Frahn v. TVA, 41 F. Supp. 83 (N.D. Ala. 1941), an unsuccessful challenge to the Knoxville location earlier lodged by Alabama citizens, was res judicata of this challenge by the state; and (3) that the term "principal office" referred solely to a formal corporate office, denominated in the Act simply as a place for receipt of service of process, a location where the elusive corporate entity could always be found.

find that the court below correctly disposed of TVA's arguments on these points. That finding is slim confort to appellee, for the judgment falls anyway on the third ground, discussed in detail below.

The Authority's assertions that Alabama lacked standing and that the state's claim was barred by the earlier decision in Frahn v. TVA, 41 F. Supp. 83 (N.D. Ala. 1941), were sufficiently dealt with below. The amicus brief filed with this court by the State of Tennessee urging reversal is itself an eloquent evocation of Alabama's alleged injury in fact; the injury is certainly sufficient to insure that there exists the concrete adverseness of positions necessary to proper clarification of the issues. Alabama has standing to challenge the TVA's actions here. In Frahn a group of Alabama residents filed suit to remedy what they considered the TVA's intransigent refusal

to obey the law. The district judge granted the Authority's Rule 12(b)(6) motion on the ground that these private individuals lacked standing to complain of TVA's behavior. The court additionally remarked that the determination of placement of its corporate headquarters was properly left to the TVA. The Authority's attempt to skewer Alabama on language in Frahn, even if this court were to find the substantive issue involved in this case there to have been resolved, must fail. Alabama was neither a party to the earlier lawsuit, nor is there an identity of interest with those individuals who were plaintiffs. In addition to its parens patriae interest, which arguably can be no different substantively from that of its citizens, the state asserts a proprietary interest distinct from that of any individual or group of its citizens.

Our findings that the district judge sufficiently resolved difficult questions of standing and res judicata can give Alabama only brief solace; fully entitled to bring this lawsuit, the state is not, however, entitled to prevail. The sole question for decision here, correctly recognized by the district court, is the meaning of the "principal office" provision of 16 U.S.C. § 831g(a). Summary judgment was thus the appropriate resolution of this matter; the victory simply went to the wrong contestant. This court must now consider the legal effect of the statutory requirement that the TVA maintain its "principal office in the immediate vicinity of Muscle Shoals, Alabama."

Contrary to Alabama's assertions, this court finds the "plain meaning" of the statutory language not to be all that plain. That application of a dictionary to the phrase necessarily results in the

conclusion that certain (but not all) administrative functions of the Authority should properly exist only in Muscle Shoals is not ineluctably clear. As a legal term of art (if such it be), "principal office" lacks a certain definiteness in its connotation; courts and commentators confuse and differently distinguish phrases such as "principal office," "registered office," and "principal place of business."[4]

Confronted with a provision the reading of which we find ambiguous, this court must turn to familiar but nevertheless slippery tools of statutory construction. Before doing so, however, it is

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[4]The comment to the revised Model Business Corporations Act indicates that confusion between the various terms typically used in state corporation laws prompted the drafters to settle on "registered office" as the favored term for the office named in the corporate chapter as a place where the corporation could always be found.

important to clarify what this exercise must entail. The TVA asserts that whatever the phrase actually means, the Authority's consistent forty-year reading of it is a reasonable one and that proper judicial deference to agency expertise would prompt this court to leave the reasonable interpretation undisturbed. That deferential solution would spare this court much of the following exercise and for that reason, among others, is a facially attractive one. That conclusion is, however, fundamentally flawed. The proposition the TVA here urges is appropriate in situations where the agency's challenged action in some way implicates its special expertise. Cf. Young v. TVA, 606 F. 2d 143, 145 (6th Cir. 1979) (question of TVA authority to construct power plant outside watershed of Tennessee River; agency construction of statutory provision upheld in part because "[t]he

construction and operation of power plants and the distribution of electric energy generated therefrom requires expertise which should be accorded deference by the courts"). This court is hard pressed to arrive at reasons why the TVA's interpretation of a purely legal point here should be accorded any weight at all, much less rendered the deference suggested. Cf. Coca-Cola Co. v. Atchison, Topeka & Santa Fe Railway Co., 608 F. 2d 213, 222 (5th Cir. 1979) ("[n]evertheless, even where the issue is one of pure law, such as interpretation of contracts, tariffs, regulations and statutes, room still is present for deference to the views of administrative agencies, particularly where the understanding of the problem is enhanced by the agency's expert understanding of the industry" (emphasis added)). Congress did not commit to the TVA's judgment the location of its principal office;

that decision is chiseled in stone at 16 U.S.C. § 831g(a). If this court were to arrive at the legal determination that "principal office" meant administrative headquarters, then, absent congressional amendment of that provision,[5] the reasonableness of TVA's error could not save it from Muscle Shoals. The question is properly one for the court to decide, and so we turn to it. We conclude that TVA's interpretation of the "principal office" provision is not only reasonable, it is correct.

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[5]A number of proposed amendments to § 8(a) have surfaced over the years, only to slip quietly back beneath the waves of congressional indifference. The most recent proposal was apparently in direct response to the district court opinion in this case. See S. 757, 96th Cong., 1st Sess. 125 Cong. Rec. S. 3347 (1979), and H.R. 1595, 96th Cong., 1st Sess. 125 Cong. Rec. 339 (1979). This Court has been made aware of no favorable action on this amendment that perhaps would render the dispute moot.

As suggested above, courts and commentators can be found falling on both sides of this definitional dispute; no attempt will here be made to cast these into respective measures and to determine the "weight" of authority. The sources that, however, helped lead us to our reading of the term in its context will be briefly noted and qualified.

The major corporate law treatises do not offer a united front. Compare 1 H. Oleck, Modern Corporate Law § 3 at 13 (1958) ("'Principal office' means the place stated in the articles or certificate of incorporation as the address of the corporation."), with 8 W. Fletcher, Cyclopedia of the Law of Private Corporations § 4035 at 458 (1966) ("The words 'principal office' have a definite meaning, especially when applied to a corporation, in which case they mean the head office, the place where the principal officers

generally transact business and the place to which reports are made and from which orders emanate."). The above formulations need not be mutually exclusive. A corporation's central headquarters, "from which orders emanate," could well be the office listed in the charter as the formal address of the entity. But it need not be; and as pointed out by the TVA, in common practice it frequently is not the same location. The Delaware corporation law statute for many years required businesses incorporating under its provisions to maintain a "principal office or place of business" within the state.[6] This popular incorporating state was never inundated with actual corporate headquarters because of this statutory requirement. No independent tabulation of now-

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[6]The Delaware statute, following the suggestion of the revised MBCA, see note 4, supra, now speaks of a "registered office."

outdated state corporation laws was attempted by this court, but as computed by the TVA (and undisputed by Alabama), 27 states' statutes in that period required the listing of a "principal office" in corporate charters. Neither legislators nor certainly corporate officers considered the statute further to require the location of any particular corporate activity, administrative or otherwise, at that address.

In the pursuit of some insight into understandings of the elusive term "principal office," a survey of case law prior to and contemporary with the passage of the TVA Act produces mixed results. Much of the case law on the meaning of "principal office" is concerned with distinguishing it in the particular context from the "principal place of business" of the subject corporation. That exercise is not particularly helpful here, as the district court order does not require, nor

does Alabama seek, the shifting of the majority of the dam construction, flood control, and electrical generating activities of the TVA to the "immediate vicinity of Muscle Shoals"; rather, the relocation of the administrative headquarters, which can be and often is distinct from the corporation's principal place of business, has been ordered.

When a word has a judicially settled meaning, it is presumed that Congress, by using that word in a statute, used it in that accepted sense. United States v. Merriam, 263 U.S. 179, 187, 44 S. Ct. 69, 71, 68 L. Ed. 240 (1923). The meanings here urged by the respective parties are not, however, judicially settled. In Caceres v. United States Shipping Board Emergency Fleet Corp., 299 F. 968, 970 (E.D.N.Y. 1924), the court distinguished "principal office" and "principal place of business" with the definition now

immortalized in Fletcher's: "The words 'principal office' have a definite meaning, especially when applied to a corporation, in which case they mean the head office, the place where the principal officers generally transact business, and the place to which reports are made and from which orders emanate." Unsurprisingly, Alabama fastens on this and similar formulations as the correct judicial settlement of meaning. Dicta in a bankruptcy case decided by this court, however, offer support to TVA's position. In Dryden v. Ranger Refining & Pipe Line Co., 280 F. 257 (5th Cir. 1922), the court had to determine the "principal place of business" of the bankrupt for jurisdictional purposes. Most of the corporate activity was centered in and around Ranger, Texas. The "general offices" of the company (described in the opinion as the administrative headquarters of the corporation) were in

Kansas City, Missouri. Ranger Refining was a Delaware corporation with its "principal office in Wilmington, Delaware." Id. at 257-58. The case was found properly to belong in the Northern District of Texas, which included the town of Ranger, and not in the locations of either the general offices or the "principal office."

The central question in statutory interpretation is, of course, what meaning Congress intended the term to bear when it passed the TVA Act. Neither party nor this court has uncovered any legislative history specifically on section 831g(a). This controversy that occupies us over forty years later merited no particular attention at the time of the Act's passage.

A consideration of the Act as a whole, however, supports our conclusion that the TVA is in full compliance with the statute by maintenance of an office

in Muscle Shoals for receipt of service of process.[7]

The TVA Act functions as the corporate charter of the Authority. 2A C. Sands, Sutherland Statutory Construction § 49.03 at 233 (4th ed. 1973), indicates that the practical interpretation of a statute must be weighed in determining legislative intent. There is no reason to suppose that Congress intended so to confine the workings of the TVA.[8] The House committee that studied the

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[7]Other TVA business is conducted at Muscle Shoals, including that of the administrative offices and staffs of the divisions of agricultural development, chemical development, and chemical operations. Over 2,000 employees function there. But TVA does not argue that this activity satisfies Alabama's and the district court's reading of the statute; the activities at Muscle Shoals beyond the maintenance of the "principal office" are not required by statute to be in any particular location.

[8]Such confinement may well have been the intention of such Alabama representatives as Senators Lister and Hugo Black, as suggested in their subsequent statements; but the intentions, expressed or hidden, of any single representative do not create congressional intent.

TVA proposal reported: "We have sought to set up a legislative framework, but not to encase it in a legislative straight-jacket. We intend that the corporation shall have much of the essential freedom and elasticity of a private business corporation." H.R. No. 130, 73d Cong., 1st Sess. 19 (1933). The general thrust of the Act argues against a localization of its activities. The work of the TVA was expected to be broad and far ranging. The orientation was regional, even national, in scope, not limited to a single state or location. The argument of Alabama that use in the TVA Act of language identical to that of the principal office provisions of two earlier, presidentially vetoed Muscle Shoals corporation acts is unpersuasive. The expected work of the TVA was to range far beyond the existing operations at Muscle Shoals. As President Franklin Roosevelt stated in his message to Congress

proposing passage of a Tennessee Valley Authority Act:

> It is clear that the Muscle Shoals development is but a small part of the potential public usefulness of the entire Tennessee River. Such use, if envisioned in its entirety, transcends mere power development: it enters the wide fields of flood control, soil erosion, afforestation, elimination from agricultural use of marginal lands, and distribution and diversification of industry. In short, this power development of war days leads logically to national planning for a complete watershed involving many states and the future lives and welfare of millions. It touches and gives life to all forms of human concerns.

I, therefore, suggest to the Congress legislation to create a Tennessee Valley Authority—a corporation clothed with the power of government but possessed with the flexibility and initiative of a private enterprise. It should be charged with the broadest duty of planning for the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin and its adjoining territory for the general social and economic welfare of the Nation.[9]

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[9]The President's interpretation of the principal office provision coincided with that of the TVA—an unsurprising development since, as even the Tennessee Valley Authority admits, it was drafted by the TVA. President Roosevelt responded to Sen. Black's immediate complaints that the TVA was not complying with the principal office provision by letter of September 6, 1934, that read in pertinent part: "It therefore seems to me to be clear that the Congress meant by the provision as to the location of the principal office of the Authority only to fix a legal domicile—not to restrict or localize its business operations in any way."

H.R. Doc. No. 15, 73d Cong., 1st Sess. (1933).

In finding that the general thrust and outlook of the TVA Act militates against a reading that the principal office provision ordained anything more exacting than the maintenance of what, in more current terms, we refer to as a "registered office," this court must respond to a textual argument raised by Alabama that enjoys some surface appeal. Section 2(e) of the Act, 16 U.S.C. § 831a(e), provides in part: "Each member of the Board, in addition to his salary, shall be permitted to occupy as his residence one of the dwelling houses owned by the government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States." This salary supplement, Alabama argues, is senseless unless the members of the Board, and thus the administrative apparatus of

the Authority, were to be living and working at the "principal office in Muscle Shoals." While Muscle Shoals is undoubtedly a lovely area, nothing in the record indicates that it is particularly suitable for vacation homes.

The free-residence provision is couched in permissive terms; the initial House version of the Act (sponsored by Lister Hill of Alabama) read: "All members of the Board shall reside in the vicinity of Muscle Shoals." The adoption by the full Congress of the permissive language in the Senate version was seen by the Joint Congressional Committee on the Investigation of the Tennessee Valley Authority in this manner: "Thus Congress provided for the possibility that the Authority might locate its administrative headquarters at Muscle Shoals, but

refrained from requiring that it do so."[10] S. Doc. No. 56, 75th Cong., 3d Sess. 22 (1939). At the passage of the Act, the only readily identifiable property to be immediately transferred to TVA control was at Muscle Shoals. Congress undoubtedly contemplated significant activity there, perhaps even assumed the location of headquarters there. But as this court has written, "[a]n assumption is not a law." Rogers v. Frito Lay, Inc., 611 F. 2d 1074, 1082 (5th Cir. 1980). This provision is not a sufficient indication that Congress, by fixing the location of the TVA's principal office and allowing the directors free housing there, required the

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[10] It can be argued, however, that all that was permissively granted was the right to live in a government residence as opposed to some other residence accessible to the principal office in Muscle Shoals; that is, while directors could live where they wished, their working location remained at the principal office (in the immediate vicinity of Muscle Shoals).

establishment of the corporate headquarters at that same location.

While there exists a paucity of congressional discussion of this provision at the time of the Act's passage, arguments to this court of both parties are replete with after-the-fact commentary by congressmen and committee. The majority report of the above-mentioned joint congressional committee found in answer to the specific question of TVA's alleged noncompliance with section 831g(a) that "[t]he committee finds that the Authority has legally complied with that part of subsection (a) of section 8 of the act, as amended, which requires that the principal office of the Authority be maintained in the immediate vicinity of Muscle Shoals, Ala." S. Doc. No. 56, 75th Cong., 3d Sess. 9 (1939). In arriving at this conclusion, the committee majority reported: "The term 'principal office' has a definite

legal meaning, as a fixed location where the corporation may always be served with legal papers. It is not synonymous with operating or administrative headquarters, which are often located in an entirely different jurisdiction." S. Doc. No. 56, 75th Cong., 3d Sess. 21 (1939). The majority report recommended "that Congress give immediate consideration to clarifying the question about which substantial difference of opinion has existed." S. Doc. No. 56, 75th Cong., 3d Sess. 22 (1939). This invitation to full congressional attention has been met only by silence.

For its part, Alabama advances the vigorously dissenting minority report of the joint committee, the testimony before that committee of Alabama Senators Bankhead and Hill and Representative Sparkman, and the immediate objections voiced by Senator Black in letters to Chairman Morgan of the TVA and President Roosevelt. The gist of

these statements was that the maintenance of the actual administrative headquarters of the TVA in Knoxville rather than Muscle Shoals was "a plain, palpable and open violation of the statute."[11] Neither party's arguments from subsequent statements are particularly helpful in divining the congressional intent. This court disposed of similar arguments in Rogers v. Frito Lay, Inc., supra, with this observation:

> The retroactive wisdom provided by the subsequent speech of a member of Congress stating that yesterday we meant something that we did not say is an ephemeral guide to history.... What happened after a statute was enacted may be history and it may come from members of the Congress, but it is not part of the

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[11] Letter of Senator Black to A.E. Morgan, July 11, 1934.

legislative history of the original enactment.

611 F. 2d at 1080. With particular relevance to the 1939 report of the joint congressional committee, the Rogers court wrote:

> Had this statement [of a subsequent committee] been made in the report of the committee that recommended the legislation, it would indeed be part of the statutory history. When uttered five years later [in this case, six years], it is mere commentary. Moreover, a committee is not Congress. It cannot create a congressional intent that did not exist, or amend a statute by a report.

Id. at 1082.

The Supreme Court, however, reminds us that such subsequent expressions are not without their usefulness. "And while

the views of subsequent Congresses cannot override the unmistakable intent of the enacting one, ... such views are entitled to significant weight ... and particularly so when the precise intent of the enacting Congress is obscure." Seatrain Shipbuilding Corp. v. Shell Oil Co., 444 U.S. 572, 596, 100 S. Ct. 800, 814, 63 L. Ed. 2d 36 (1980). The "precise intent of the enacting Congress" is here certainly "obscure," but it is doubtful that the statements offered here can be said to approach anything so grand as the view of a subsequent Congress. Strong statements fully supportive of their respective positions are offered by each party. But the only thing approaching a "view of Congress" is its silence in the face of this controversy. The chief force of these subsequent declarations, then, lies in their indication of congressional awareness, at a very early date, of the TVA's

alleged noncompliance with the statutory provision. The silence of Congress did not result from ignorance of the dispute. Congress was directed to the problem; simply no action was taken.[12] Congressional inaction is, of course, a jumbled text from which to extract much meaning. But continued congressional funding of allegedly improper agency action can be viewed in appropriate circumstances as a ratification of that agency practice. Young v. TVA, 606 F. 2d 143, 147 (6th Cir. 1979); Swan Lake Hunting Club v. United States, 381 F. 2d

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[12]Alabama attempts to draw significance from the failure of passage of two bills introduced by Tennessee representatives to amend § 831g(a) by substituting Knoxville for Muscle Shoals as the location of TVA's principal office. The Supreme Court has remarked that "unsuccessful attempts at legislation are not the best of guides to legislative intent." Red Lion Broadcasting Co. v. FCC, 395 U.S. 867, 381 n. 11, 89 S. Ct. 1794, 1802 n. 11, 23 L. Ed. 2d 371 (1969).

238, 241 n. 3 (5th Cir. 1967).[13] Aware of the challenge to TVA's construction of the principal office provision, Congress continues, as it has since 1934, to appropriate funds for the maintenance of the central headquarters in Knoxville, not Muscle Shoals. During a period in which the TVA directors, in the exercise of their business judgment, felt that efficiency (and not the terms of section 831g(a)) dictated a removal of the administrative headquarters to Muscle Shoals, congressional riders restricted the use of appropriated funds in aid of that move. And while the Act has been amended several

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[13] TVA v. Hill, 437 U.S. 153, 98 S. Ct. 2279, 57 L. Ed. 2d 117 (1978), suggests a wary application of such principles of implied statutory alteration. This situation is not that of Hill; there are here no competing statutory policies, no confusion about purposes or goals. The argument is not one of repeal by implication, the disfavor of which Hill ably expresses. See Young v. TVA, 606 F. 2d at 148.

times over the ensuing years,[14] Congress has expressed no dissatisfaction with the Authority's construction of the principal office provision.

> To be sure, it may not always be realistic to infer approval of a judicial or administrative interpretation from congressional silence alone. [citations omitted] But once an agency's statutory construction has been "fully brought to the attention of the public and the Congress," and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned.

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[14]Including an amendment in 1935 making explicit the intention that the Act "be liberally construed to carry out the purposes of Congress." 16 U.S.C. § 831dd(b).

United States v. Rutherford, 442 U.S. 544, 99 S. Ct. 2470, 2476 n. 10, 61 L. Ed. 2d 68 (1979).

A lengthy consideration of the ambiguous meaning of the statutory term, general principals of corporate practice, the broad and flexible powers and purposes conferred by the statute, and the echoing silence of Congress in the face of the controversy leads this court to conclude that the district court's judgment must be reversed and this case remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

APPENDIX D

UNITED STATES COURT OF APPEALS

For The Fifth Circuit

No. 79-1283

D. C. Docket No. CA 77-M0377NW

STATE OF ALABAMA, Ex Rel. CHARLES A. GRADDICK, As Attorney General of the State of Alabama,

Plaintiff-Appellee,

versus

TENNESSEE VALLEY AUTHORITY, ET AL.,

Defendants-Appellants.

Appeal from the United States District Court for the

Northern District of Alabama

Before GEE, FAY and RANDALL, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded to the said District Court in accordance with the opinion of this Court;

IT IS FURTHER ORDERED that the plaintiff-appellee pay to the defendants-appellants the costs on appeal, to be taxed by the Clerk of this Court.

February 13, 1981

ISSUED AS MANDATE: APR 27 1981

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 79-1283

STATE OF ALABAMA, Ex Rel.,
CHARLES A. GRADDICK, As Attorney
General of the State of Alabama,

Plaintiff-Appellee,

versus

TENNESSEE VALLEY AUTHORITY, ET AL.,

Defendants-Appellants.

Appeal from the United States
District Court for the

Northern District of Alabama

ON PETITION FOR REHEARING

(April 2, 1981)

Before GEE, FAY and RANDALL, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ Thomas Gibbs, Jr.
United States Circuit Judge